

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

CARLOS HOWARD,

Plaintiffs,

v.

NO.

COMMONWEALTH OF VIRGINIA,

CL 12-392

Defendants.

FILED
JAN 23 2012
CLERK OF COURT
JAN 23 2012
JAN 23 2012

**MOTION AND NOTICE FOR INJUNCTIVE RELIEF AND
MOTION TO STAY GENERAL DISTRICT COURT PROCEEDINGS**

TAKE NOTICE that on the 19th day of January, 2012, at 3:30 p.m. or as soon thereafter as counsel may be heard, the undersigned will move this Honorable Court for an injunction and an order staying all administrative proceedings currently pending against the Plaintiff and further enjoining Defendants from removing any further licensures by reason of the following:

1. Plaintiffs have provided a copy of this Motion and Notice to the Defendant, the Attorney General and the secretary of regulatory boards, via facsimile and U.S. Mail on January 19, 2012.
2. That on January 19, 2011, the Norfolk Sheriff's Department along with Karen Schaller and Pat Stigall with the Commonwealth of Virginia Department of Health Professions served Plaintiff's legal counsel and Plaintiff's place of employment.
3. Plaintiff's legal counsel was served with an Order of Summary Suspension, a Notice of Hearing and a Statement of Particulars regarding the undertaking of Khyliel M. Thorpe, Naomi I. Wellons and Marie Lester, deceased.
4. That Plaintiff was not given notice of the removal of his license and the

suspension of his funeral home until the morning of January 19, 2012.

5. That without reasonable notice, Plaintiff is unable to properly notify families that viewings and funerals cannot be held.

6. That, in fact, Plaintiff has a viewing scheduled for later today, of which family members have flown in from various areas throughout the country to attend.

7. That circumstantial evidence has led to the suspension of Plaintiff's license and establishment.

8. That pursuant to Section 2.2-4028, to the Code of Virginia (1950), as amended ("Code) Plaintiff is entitled to intermediate relief from an agency action.

9. That pursuant to Section 54.1-2408.1 of the Code, Defendant only has the right to suspend an individual's license – not the licensed "establishment".

10. That Section 2.2-4030 of the Code allows for recovery of costs and attorney's fees from the Agency.

11. That Section 54.1-2810 of the Code governs licenses for ESTABLISHMENTS as opposed to individuals which is a section never referenced by the Agency in their Order, Notice or Statement of Particulars.

12. The Plaintiff will likely prevail at trial.

13. That Plaintiff is without other legal remedy.

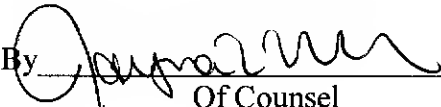
14. The relief requested is not sought for delay purposes, but so that justice may be served.

15. The relief requested is sought to avoid duplicative and costly utilization of resources and the economies of justice would best be served by granting the relief requested herein.

16. Defendant will suffer no additional harm if the Motion is granted as there is adequate equity in the Plaintiffs' property. Plaintiffs ask the Court to set a bond secured by such equity.

WHEREFORE, the Plaintiffs move this Honorable Court to enter an order staying all administrative proceedings currently pending against the Plaintiff and further enjoining Defendants from removing any further licensures and suspensions of the Plaintiff's place of employment and that Plaintiff be compensated for costs and attorney's fees as a result of the Agency's actions.

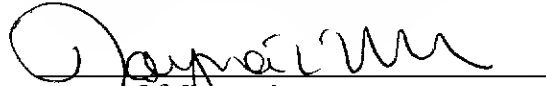
CARLOS HOWARD, FSP and CARLOS A. HOWARD FUNERAL HOME

By  _____
Of Counsel

Joyván L. Malbon, Esquire
BULLOCK & COOPER, P.C.
5741 Cleveland Street
Suite 220
Virginia Beach, VA 23462
(757) 965-5608
(757) 502-4936
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been mailed and faxed to Director of the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Ste. 300, Henrico, VA 23233-1463, this 19th day of January, 2012 and the Executive Director of the Board of Funeral Directors, Perimeter Center, 9960 Mayland Drive, Ste. 300, Henrico, VA 23233-1463.



Of Counsel



DUPLICATE RECEIPT
NORFOLK CIRCUIT COURT
CIVIL

DATE: 01/19/12 TIME: 15:29:54 ACCOUNT: 710CL12000392-00 RECEIPT: 12000002475

CASHIER: CDR REG: NU78 FILING: INJ TYPE: FULL PAYMENT CLS:

STYLE OF CASE: HOWARD, CAROLS VS. MOTION AND NOTICE FOR I

SUIT AMOUNT: \$.00

ACCT OF: HOWARD, CAROLS

RECD: MALBON, JOYVAN

CHARGE: \$89.44

DESCRIPTION 1: PLAINTIFF: HOWARD, CAROLS

2: NO HEARING SCHEDULED

CODE	DESCRIPTION	PAID	CODE	DESCRIPTION	PAID
049	WRIT TAX - CIVIL	5.00	106	TECHNOLOGY TRST FND	5.00
123	LEGAL AID FEE	9.00	147	INDIGENT ASSISTANCE	1.00
170	COURT TECH FUND	10.00	219	LAW LIBRARY	4.00
229	CITY OF NORFOLK CHM	2.00	304	CLERK CIVIL FEE	50.00
407	CONVENIENCE FEE	3.44			

TOTAL TENDERED : 89.44

TOTAL AMOUNT PAID: 89.44

CHANGE AMT : .00

ISSUED BY: CDR

PAYOR'S COPY